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7

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

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11 Wine Scout International,

12 Plaintiff,

13 DECLARATION OF MARK POPE IN
14 SUPPORT OF MOTION FOR
15 PRELIMINARY INJUNCTION

16 Garcia Family Vineyards, Inc.

17 Defendant.

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19 I, Mark Pope, declare as follows:

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21 1. I am the founder and Chief Executive Officer of Wine Scout International, doing
22 business as Bounty Hunter ("Wine Scout"). I submit this declaration in support of Wine Scout's
23 Motion for Preliminary Injunction. I have personal knowledge of the facts stated herein and if
24 called to testify upon same could and would do so willingly.

25
26 2. In 1994 I began doing business under the trade name Bounty Hunter and founded
27 BOUNTY HUNTER as a mail order catalog featuring wine. My goal was, and is still, to
introduce consumers to wine in a fun, entertaining, and irreverent way and to make the catalog

1 accessible and engaging to a variety of people, from the wine novice to the wine connoisseur.
2 The catalog is released twice a year, with a spring issue and a fall/holiday issue, and in total Wine
3 Scout has released 24 unique issues of the catalog. By 1996 we had wine sales of approximately
4 \$400,000. Today we mail out over 2,000,000 catalogs a year and in 2007 alone saw sales of wine
5 from the brand total in excess of \$15,000,000, representing the sale of over 190,000 bottles of
6 wine. Since 2003, Wine Scout has produced and mailed over 7,800,000 BOUNTY HUNTER
7 catalogs to consumers. A true and correct copy of the front page of our current catalog is attached
8 as Exhibit 1.

9
10 3. In order to produce the bi-annual BOUNTY HUNTER catalog, I and others at
11 Wine Scout taste over 5,000 wines a year. From these, we select only the best wines for our
12 customers. Each catalog features around 200 wines and the focus is largely on wines from
13 California, although we do offer wines from other locations and countries.

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15 4. The BOUNTY HUNTER catalog has been very successful and well-received by
16 consumers. Over 5,000,000 people are on the catalog's mailing list and the catalogs are mailed to
17 all 50 states. Since 1994, we have received over 200,000 orders from the catalog and have sold
18 over 1,200,000 million bottles of wine from these orders. We ship wine to every state which
19 permits the shipment of wine from California. Wine Scout's total sales from the BOUNTY
20 HUNTER catalog since its inception exceed \$65,000,000.

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22 5. Bounty Hunter has had an active online wine retail business since 1998, when we
23 launched the www.bountyhunterwine.com website. A true and correct copy of the BOUNTY
24 HUNTER website home page is attached as Exhibit 2. The website averages 5,800 unique
25 visitors per month. In 2007 alone, the www.bountyhunterwine.com website received over 91,000
26 hits and sold over 14,000 bottles of wine, with total revenues from such sales exceeding
27 \$1,200,000.

1 6. Shortly after the first BOUNTY HUNTER catalog was released in 1994, Wine
2 Scout began the limited retail sale of wine under the BOUNTY HUNTER mark. In 2003, Wine
3 Scout opened its current BOUNTY HUNTER retail wine shop, restaurant, and wine bar in
4 downtown Napa, California. Photos of the storefront are attached as Exhibit 3. The BOUNTY
5 HUNTER retail shop, wine bar, and restaurant features over 400 wines available for purchase and
6 40 wines available by-the-glass. Copies of the BOUNTY HUNTER menu and wine list are
7 attached as Exhibit 4. The restaurant was opened in order to compliment the wines we were
8 offering, since much of the pleasure of wine is enhanced when combined with great food. The
9 BOUNTY HUNTER wine bar, restaurant, and wine retail shop are all housed in the same space,
10 meaning that wine, by the glass or the bottle, can be purchased either at the retail counter at one
11 section of the room or by diners at their tables. Once purchased, consumers are free to drink their
12 wine at the store or take their purchases to go. In keeping with Wine Scout's mission to make the
13 purchase of wine accessible to the general public, prices begin at \$5 for wine by the glass and
14 \$10.95 for wine by the bottle. Since 2003, the BOUNTY HUNTER wine bar, wine shop and
15 restaurant has served over 100,000 people and has had sales of over \$6,000,000.

16 7. BOUNTY HUNTER also offers a number of different wine clubs through which
17 consumers can receive monthly or quarterly shipments of wine, together with informational
18 inserts regarding the wines. True and correct copies of representative wine club inserts are
19 attached as Exhibit 5. The wine clubs range from \$49 per month up to \$600 a quarter and have
20 names such as DOUBLE BARREL, KILLER CAB, GOLD STANDARD, SILVER SPUR,
21 BRONZE STAR, and MOST WANTED. True and correct copies of website printouts and
22 catalog excerpts with information on the wine clubs are attached as Exhibit 6. Currently,
23 BOUNTY HUNTER has over 1,800 wine club members.

24 8. Each and every bottle of wine sold by the BOUNTY HUNTER, whether via the
25 retail wine shop, the catalog, or our Internet website, is marked with a sticker featuring the
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1 BOUNTY HUNTER trademark. A copy of the sticker is attached as Exhibit 7. We use this
2 sticker to communicate to our customers that wines selected to be sold by BOUNTY HUNTER
3 possess a certain degree of excellence. We have sold over 1,200,000 million bottles of wine
4 bearing the BOUNTY HUNTER logo sticker.

5 9. BOUNTY HUNTER also offers gift packs and special limited release selections of
6 wine packaged in specially marked wooden boxes bearing the BOUNTY HUNTER mark,
7 reserved for compilations of wines of exemplary quality. A photo of BOUNTY HUNTER's
8 "Legends of the Fall" gift pack and wooden box and a catalog excerpt are attached hereto as
9 Exhibit 8. In addition, BOUNTY HUNTER also offers wine gift sets in cardboard wine boxes
10 bearing the BOUNTY HUNTER mark for corporate and personal gifting. A photo of the
11 cardboard boxes is attached as Exhibit 9. BOUNTY HUNTER has used these specially labeled
12 boxes for its wine compilation packages since 1999.

13 10. In addition to selling wine, Wine Scout also produces wines of its own under
14 several different proprietary labels and sells these wines through the BOUNTY HUNTER retail
15 store, catalog, and website. As it states on our business cards, letterhead, and nearly all other
16 collateral materials we use in the course of our business, BOUNTY HUNTER is much more than
17 just a wine retail business – we are a "Merchant," "Negociant," and "Vintner." True and correct
18 copies of business cards and letterhead are attached as Exhibit 10. That is, not only do we source
19 wines from third party producers to sell to consumers, we buy bulk wine to develop and bottle our
20 own private label wines. BOUNTY HUNTER's proprietary labels are JUSTICE, BLIND
21 JUSTICE, POETIC JUSTICE, FRONTIER JUSTICE, BROKEN SPUR, WAYPOINT, TIN
22 STAR, RIDGE RUNNER, CAMPFIRE RED, and PURSUIT. These wines are all sold in the
23 industry-standard 750-ml bottle size. Many of our wines are Cabernet Sauvignons and all of our
24 wines are produced from grapes from California. Of these, our most recent introduction is the
25 JUSTICE series, which was released for public sale in 2007. True and correct copies of Wine
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27

1 Scout's proprietary wine labels are attached as Exhibit 11. We began purchasing wine to bottle
 2 for sale in 1999 and released our first vintage for sale in 2003. Since that time, we have sold over
 3 5,000 twelve-bottle cases of our proprietary wines, which represents over 60,000 bottles, and we
 4 plan to reach production of 10,000 cases annually. As a result, our BOUNTY HUNTER mark
 5 reflects and incorporates the many facets of Wine Scout's business – wine production, wine
 6 catalog sales, retail wine store sales, and bar and restaurant services – into one overarching brand.
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8 11. All of the wine currently produced by Wine Scout under our proprietary labels
 9 bears the BOUNTY HUNTER trade name and/or our www.bountyhunterwine.com Internet
 10 address on the back label. However, even though our private label wines don't carry the
 11 BOUNTY HUNTER mark on the front label, consumers and the media often refer to our
 12 proprietary wines as "BOUNTY HUNTER wines" or include the mark BOUNTY HUNTER in
 13 addition to the brand name when describing the wine, i.e., BOUNTY HUNTER FRONTIER
 14 JUSTICE Napa Valley 2004. Attached as Exhibit 12 are true and correct copies of Internet
 15 printouts demonstrating use of the BOUNTY HUNTER house mark in conjunction with Wine
 16 Scout's proprietary brands.
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18 12. The marketing of the entire BOUNTY HUNTER brand, including the wine, wine
 19 retail services, catalog, and the Internet website, is replete with themes and images of the "Wild
 20 West," "outlaws," "cowboys," "vigilantes," "posses" and the like. This Western theme is
 21 reflected in the names of our wine clubs (DOUBLE BARREL, KILLER CAB, GOLD
 22 STANDARD, SILVER SPUR, BRONZE STAR, MOST WANTED) and the names of our
 23 proprietary blends (JUSTICE, BLIND JUSTICE, POETIC JUSTICE, FRONTIER JUSTICE,
 24 BROKEN SPUR, TIN STAR, RIDGE RUNNER, CAMPFIRE RED, PURSUIT). BOUNTY
 25 HUNTER's email newsletter is called the BOUNTY HUNTER TELEGRAPH and the website
 26 and catalog refer to the wine shop and restaurant as our "Headquarters." True and correct copies
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of representative website and catalog printouts are attached as Exhibit 13. In addition, the gift

certificates for the BOUNTY HUNTER wine shop and restaurant are called "Silver Certificates" and look like old-fashioned monetary bills of various denominations. True and correct copies of the gift certificates are attached as Exhibit 14. The theme carries over into our packaging as well, as even the tissue paper used to wrap wine purchases at the wine shop and restaurant is specially printed with the BOUNTY HUNTER logo and images of cacti, cowboys, cowboy boots, sheriff stars, horseshoes, horses, cows, and guitars. A true and correct copy of an image of the tissue paper is attached as Exhibit 15. The décor of the restaurant and wine shop itself has been described by Wine Scout and visitors alike as looking like an old-fashioned "saloon," with its saddle bar stools, brick walls, and stamped tin ceiling. Attached as Exhibit 16 is a true and correct copy of the wine list and Internet articles referencing the Western theme.

13. In addition to marketing the brand by virtue of our large-scale mailings of the BOUNTY HUNTER catalog, we have advertised the BOUNTY HUNTER wine shop and catalog in *Wine Spectator* magazine as well as via the purchase of sponsored links on Google and Yahoo search engines. We also hold "road shows" in various cities across the United States to promote the BOUNTY HUNTER catalog and pour wines for consumers from our inventory, both from our suppliers and our own proprietary wines. Attached hereto as Exhibit 17 is a true and correct copy of the program from the October 2006 road show in Newport Beach, California. I have promoted the BOUNTY HUNTER wine shop, restaurant and catalog on local and regional radio programs and the interior of the wine shop and restaurant has been filmed for television segments featured on the Food Network. We also produce and distribute collateral materials bearing the BOUNTY HUNTER logo, such as hats, t-shirts, and corkscrews.

14. We promote the BOUNTY HUNTER brand at various trade events throughout the state. We are consistently one of the top five bidders for wine at the Napa Valley Vintners' (NVV) annual "Premier Napa Valley" wine auction, a barrel "futures" auction open only to members of the wine trade, including wine shops, restaurants, and distributors. BOUNTY

1 HUNTER also participates in NVV wine tasting events in San Francisco and is a barrel lot donor
2 for NVV's 2008 "Auction Napa Valley," one of the largest charity wine auctions in the world. In
3 addition, BOUNTY HUNTER was also a donor at the 2005 Sun Valley Center for the Arts
4 auction in Sun Valley, Idaho. We have also partnered with Niman Ranch, the national purveyor
5 of humanely raised meats, to develop wine and meat pairings featuring BOUNTY HUNTER's
6 proprietary PURSUIT wine and recipes using Niman Ranch products, as well as offering special
7 discounts on wine to Niman Ranch customers. A true and correct copy of the Niman Ranch
8 promotional newsletter is attached as Exhibit 18. In addition, we do various promotional mailers
9 to our customers to advertise our Preferred Customer program and to advertise holiday specials.
10 True and correct copies of representative promotional mailers are attached as Exhibit 19.

12 15. Over the past fourteen years, the BOUNTY HUNTER shop, restaurant, catalog
13 and website have attracted a great deal of unsolicited media attention. The BOUNTY HUNTER
14 brand has been featured or referenced in numerous well-known media outlets, including *The New*
15 *York Times*, *The Wall Street Journal*, *The San Francisco Chronicle*, *The Los Angeles Times*, *The*
16 *Chicago Sun-Times*, *Pittsburg Post Gazette*, *Seattle Times*, *The Press Democrat*, *The Washington*
17 *Times*, *The Calgary Sun*, *The International Herald Tribune*, *the Associated Press*, *Wine & Spirits*,
18 *Wine Spectator*, *Wine Enthusiast*, *The Wine News*, *The New Yorker*, *Sunset*, *Via*, *Food & Wine*,
19 *Country Home*, *Forbes*, *Money*, *The Robb Report*, *Playboy*, *7 x 7*, *The Bohemian*, *Bloomberg*
20 *Markets*, *Market Watch*, www.americanairlines.com, www.travelchannel.com, www.msn.com,
21 www.cnn.com, NBC's "Today Show," and many others. True and correct copies of
22 representative articles demonstrating media coverage of the BOUNTY HUNTER brand are
23 attached as Exhibit 20.

26 16. In addition to media coverage, BOUNTY HUNTER has also received numerous
27 awards and recognition. *Food & Wine* magazine selected BOUNTY HUNTER's online website
as one of its "10 Best Online Wine Shops, the *San Francisco Chronicle* named BOUNTY

1 HUNTER restaurant one of its “Top 100 Bay Area Restaurants” and the restaurant also received
2 “Best of the North Bay 2004” from the *Bohemian* newspaper. True and correct copies of article
3 excerpts are attached as Exhibit 21. BOUNTY HUNTER’s proprietary wines have also received
4 many favorable reviews and acclaim: In 2007, BOUNTY HUNTER and its JUSTICE series and
5 WAYPOINT brand were profiled in *Wine Spectator* magazine’s “20 To Watch – Exciting New
6 Cabernet Labels” article and each wine received scores above 90 points. The JUSTICE wines
7 were also included in *Wine Spectator*’s 2007 Buying Guide and its “Top 100 for 2007” list. True
8 and correct copies of excerpts from magazines and Internet printouts demonstrating such awards
9 and recognition are attached as Exhibit 22.

11 17. In late October 2007, I became aware of Defendant’s planned use of the trademark
12 BOUNTY HUNTER for wine when my attorneys, Dickenson, Peatman & Fogarty, sent me the
13 Certificate of Label Approval that has been issued to Pisoni Vineyards, doing business as Garcia
14 Family Vineyards, by the Alcohol and Tobacco Tax and Trade Bureau for wine bearing the mark
15 BOUNTY HUNTER. The label stated that the wine was a California Cabernet Sauvignon and
16 was for use on a 750-ml bottle of wine, the most commonly used and widely available wine bottle
17 size for retail sales of wine. Shortly thereafter, on or about November 1, 2007, I spoke with Mr.
18 Pisoni, a principal at Pisoni Vineyards, via telephone and he advised me that Pisoni Vineyards
19 would not produce any wine for Garcia under the BOUNTY HUNTER label until this matter had
20 been resolved.

22 18. On November 13, 2007, I spoke with Mark Garcia, the principal owner of
23 Defendant, via telephone and expressed my objections to its introduction of a BOUNTY
24 HUNTER brand wine. I indicated to Mr. Garcia that it was common knowledge in the wine
25 business who and what the BOUNTY HUNTER brand represented and offered to send him a
26 copy of the latest *Wine Spectator* magazine in which two of the BOUNTY HUNTER brands
27 (WAYPOINT and JUSTICE) received extremely favorable, nationally read reviews. At the

1 conclusion of the call, I was under the impression that Mr. Garcia would reconsider his planned
2 infringing use of the BOUNTY HUNTER mark. Mr. Garcia said he was going to get back to me,
3 possibly with a face to face meeting after the Thanksgiving holidays. Mr. Garcia never contacted
4 me again or followed up on that conversation.

5 19. On or about February 11, 2008, after the filing of the initial complaint in this action, I
6 spoke with Mr. Garcia again by telephone to again request his assurance that Defendant would
7 not be releasing wine under the infringing mark BOUNTY HUNTER. Mr. Garcia declined to
8 give me any such assurance and stated he would not agree to cease use of the BOUNTY
9 HUNTER mark, countering instead that he might be willing to "work something out." I indicated
10 to Mr. Garcia that I had no intention of allowing any unauthorized use of the BOUNTY
11 HUNTER mark by Mr. Garcia or anyone else in the wine business, as that would erode Wine
12 Scout's own hard earned, rightfully gained, long-standing, and valuable rights in its BOUNTY
13 HUNTER brand. Shortly thereafter, I instructed my attorneys to proceed with this motion for
14 preliminary injunction.

17 I declare under penalty of perjury under the laws of the United States that the foregoing is
18 true and correct. Executed this 6th day of March 2008 at Napa, California.

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MARK POPE